

AMENDED IN SENATE APRIL 27, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 633**

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**Introduced by Senator Wright**

February 27, 2009

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~~An act to amend Section 11423 of the Business and Professions Code, relating to real estate appraisers. An act to amend Section 2954 of the Civil Code, relating to mortgages.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 633, as amended, Wright. ~~Real estate appraisers.~~ *Mortgages: impound accounts.*

*Existing law prohibits requiring an impound, trust, or other type of account for payment of property taxes, insurance premiums, or other purposes relating to the property as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, except as specified.*

*This bill would include among those exceptions sales where a loan is made in compliance with the requirements for higher-priced mortgage loans established in Regulation Z, as defined, whether or not the loan is a higher-priced mortgage loan, and where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization.*

~~Existing law, the Real Estate Appraisers' Licensing and Certification Law, provides for the licensure and regulation of real estate appraisers and vests the duties of enforcing and administering that law in the Office~~

of Real Estate Appraisers. Existing law requires a lender in a loan transaction secured by real property to provide notice, as specified, to a loan applicant that, upon request, the applicant is entitled to receive a copy of the appraisal report, provided he or she has paid for the appraisal. Existing law requires that an applicant's written request for a copy of an appraisal be received by the lender no later than 90 days after the lender has provided notice of the action taken on the application, or the application has been withdrawn. Existing law also requires the lender to mail or deliver a copy of an appraisal within 15 days after receiving a written request from the applicant or within 15 days after receiving the appraisal, whichever occurs later.

~~This bill would delete these requirements, and instead require that the lender mail or deliver a copy of the appraisal report to the loan applicant within 15 days of receiving the appraisal, provided the applicant has paid for the appraisal.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2954 of the Civil Code is amended to  
2     read:  
3     2954. (a) (1) No impound, trust, or other type of account for  
4     payment of taxes on the property, insurance premiums or other  
5     purposes relating to the property shall be required as a condition  
6     of a real property sale contract or a loan secured by a deed of trust  
7     or mortgage on real property containing only a single-family,  
8     owner-occupied dwelling, except: (1) where required by a state or  
9     federal regulatory authority; or (2) where a loan is made,  
10    guaranteed, or insured by a state or federal governmental lending  
11    or insuring agency; or (3) upon a failure of the purchaser or  
12    borrower to pay two consecutive tax installments on the property  
13    prior to the delinquency date for such payments; or (4) where the  
14    original principal amount of such a loan is (i) 90 percent or more  
15    of the sale price, if the property involved is sold, or is (ii) 90  
16    percent or more of the appraised value of the property securing  
17    the loan; or (5) whenever the combined principal amount of all  
18    loans secured by the real property exceeds 80 percent of the  
19    appraised value of the property securing the loans; *or (6) where a*  
20    *loan is made in compliance with the requirements for higher-priced*

1 mortgage loans established in Regulation Z, whether or not the  
2 loan is a higher-priced mortgage loan; or (7) where a loan is  
3 refinanced or modified in connection with a lender's  
4 homeownership preservation program or a lender's participation  
5 in such a program sponsored by a federal, state, or local  
6 government authority or a nonprofit organization. Nothing  
7 contained in this section shall preclude establishment of such an  
8 account on terms mutually agreeable to the parties to the loan, if,  
9 prior to the execution of the loan or sale agreement, the seller or  
10 lender has furnished to the purchaser or borrower a statement in  
11 writing, which may be set forth in the loan application, to the effect  
12 that the establishment of such an account shall not be required as  
13 a condition to the execution of the loan or sale agreement, and  
14 further, stating whether or not interest will be paid on the funds in  
15 such an account.

16 An impound, trust, or other type of account for the payment of  
17 taxes, insurance premiums or other purposes relating to property  
18 established in violation of this subdivision is voidable, at the option  
19 of the purchaser or borrower, at any time, but shall not otherwise  
20 affect the validity of the loan or sale.

21 (2) *For the purposes of this subdivision, "Regulation Z" means*  
22 *any rule, regulation, or interpretation promulgated by the Board*  
23 *of Governors of the Federal Reserve System and any interpretation*  
24 *or approval issued by an official or employee duly authorized by*  
25 *the board to issue interpretations or approvals dealing with,*  
26 *respectively, consumer leasing or consumer lending, pursuant to*  
27 *the Federal Truth in Lending Act, as amended (15 U.S.C. Sec.*  
28 *1601 et seq.).*

29 (b) Every mortgagee of real property, beneficiary under a deed  
30 of trust on real property or vendor on a real property sale contract  
31 upon the written request of the mortgagor, trustor or vendee shall  
32 furnish to the mortgagor, trustor or vendee for each calendar year  
33 within 60 days after the end of such year an itemized accounting  
34 of moneys received for interest and principal repayment and  
35 received and held in or disbursed from an impound or trust account,  
36 if any, for payment of taxes on the property, insurance premiums  
37 or other purposes relating to the property subject to the mortgage,  
38 deed of trust or real property sale contract. The mortgagor, trustor  
39 or vendee shall be entitled to receive one such accounting for each  
40 calendar year without charge and shall be entitled to additional

1 similar accountings for one or more months upon written request  
2 and on payment in advance of fees as follows:

3 (1) Fifty cents (\$0.50) per statement when requested in advance  
4 on a monthly basis for one or more years.

5 (2) One dollar (\$1) per statement when requested for only one  
6 month.

7 (3) Five dollars (\$5) if requested for a single cumulative  
8 statement giving all the information described above back to the  
9 last statement rendered.

10 If the mortgagee, beneficiary or vendor transmits to the  
11 mortgagor, trustor or vendee a monthly statement or passbook  
12 showing moneys received for interest and principal repayment and  
13 received and held in and disbursed from an impound or trust  
14 account, if any, the mortgagee, beneficiary or vendor shall be  
15 deemed to have complied with this section.

16 No increase in the monthly rate of payment of a mortgagor,  
17 trustor or vendee on a real property sale contract for impound or  
18 trust accounts shall be effective until after the mortgagee,  
19 beneficiary or vendor has furnished the mortgagor, trustor or  
20 vendee with an itemized accounting of the moneys presently held  
21 by it in the accounts, and a statement of the new monthly rate of  
22 payment, and an explanation of the factors necessitating the  
23 increase.

24 The provisions of this section shall be in addition to the  
25 obligations of the parties as stated by Section 2943 of this code.

26 Every person who willfully or repeatedly violates this subdivision  
27 shall be subject to punishment by a fine of not less than fifty dollars  
28 (\$50) nor more than two hundred dollars (\$200).

29 (c) As used in this section, "single-family, owner-occupied  
30 dwelling" means a dwelling which will be owned and occupied  
31 by a signatory to the mortgage or deed of trust secured by such  
32 dwelling within 90 days of the execution of such mortgage or deed  
33 of trust.

34 ~~SECTION 1. Section 11423 of the Business and Professions~~  
35 ~~Code is amended to read:~~

36 ~~11423. (a) For purposes of this section:~~

37 ~~(1) "Applicant" means a person who has made a written request~~  
38 ~~for an extension of credit which is proposed to be secured by real~~  
39 ~~property. The term does not include a guarantor, surety, or other~~  
40 ~~person who will not be directly liable on the loan.~~

1     ~~(2) “Appraisal” shall have the same meaning as set forth in~~  
2     ~~subdivision (b) of Section 11302.~~

3     ~~(3) “Residential real property” means real property located in~~  
4     ~~the State of California containing only a one-to-four family~~  
5     ~~residence.~~

6     ~~(b) A lender in a loan transaction secured by real property shall~~  
7     ~~mail or deliver a copy of an appraisal to a loan applicant within~~  
8     ~~15 days of receiving the appraisal, provided the applicant has paid~~  
9     ~~for the appraisal.~~

10    ~~(c) Nothing in this section is intended to effect a change in~~  
11    ~~current law in any manner with respect to reliance on an appraisal~~  
12    ~~by anyone other than the lender who released the appraisal.~~

13    ~~(d) This section does not apply to appraisals obtained by lenders~~  
14    ~~on property owned by the lender, nor to appraisals obtained by the~~  
15    ~~lender in anticipation of modifying any existing loan agreement~~  
16    ~~if the lender has not charged for the appraisal.~~

17    ~~(e) In the case of loans secured by residential real property,~~  
18    ~~compliance with Regulation B (12 C.F.R. Part 202 et seq.) of the~~  
19    ~~Federal Reserve Board is deemed to be compliance with the~~  
20    ~~provisions of this section and Section 10241.3.~~

21    ~~(f) This section is in addition to any right of access to appraisals~~  
22    ~~that exists under any other provision of state or federal law.~~